

## **REMARKS**

### **1. Introduction**

The Examiner has objected to the drawings under 37 CFR § 1.83(a) for failing to show every feature of the invention as claimed. Claims 1-21, 32-39, 41-43 and 45 have been rejected under 35 USC § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1-21, 39, 41 and 47 have been rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 6,491,326 to Massey et al. (Massey) in view of U.S. Patent No. 6,684,571 to Hendrickson et al. (Hendrickson) and U.S. Patent No. 3,364,624 to Davis (Davis). Claims 32-35, 37, 38, 42 and 43 have been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Davis. Claims 36 and 45 have been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Davis and Hendrickson. Claims 40, 46, and 48 have been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Hendrickson.

Applicant respectfully traverses the Examiner's objection to the drawings on the grounds that the drawings show all of the claimed elements. Applicant has amended claims 1, 5, 32, 34, 35, 41, 42, and 43 to overcome the § 112 rejections. Finally, Applicant respectfully requests the withdrawal of the rejections from all of the claims on the grounds that the cited references fail to disclose or suggest all the elements of the claims.

### **2. Objection to the Drawings**

The drawings have been objected to under 37 CFR § 1.83(a) for failing to show every feature of the invention claimed. Specifically, the Examiner states that the

drawings fail to show the elongated spacer having a distal end that engages the wooden insert of claim 40.

Figure 2, however, shows an embodiment of the spacer described in claim 40 as reference numeral 64. See, specification at page 7, paragraph 41. Accordingly, Applicant requests the withdrawal of the objection to the drawings.

### **3. 35 USC § 112 Rejections**

Claims 1-21, 32-39, 41-43 and 45 have been rejected under 35 USC § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 5, 32, 34, 35, 41, 42 and 43 have been amended. These amendments have been made in light of the Examiner's comments and are deemed by Applicant to overcome the § 112 rejections. Accordingly, Applicant respectfully requests the withdrawal of the § 112 rejection from all claims.

### **4. Claim 1**

Claim 1 has been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Hendrickson and Davis. Applicant respectfully submits that the Examiner has misconstrued the alignment screws and wooden bucks of Davis, as well as the jamb filler of Hendrickson. Applicant requests the withdrawal of the rejection on the grounds that the cited references fail to disclose all the elements of claim 1.

Claim 1 recites, among other features, a spacer for preventing the outer edge of a door from contacting a side portion of a frame in an astragal assembly. This allows air to flow between the frame and a passive door, preventing moisture build up between the

two. In addition, claim 1 recites a wooden insert retained within an elongated open channel in the frame.

The Examiner states that Davis discloses the spacer element. Davis, however, discloses an alignment screw 28' for adjusting a molding and the position of hinges 70 (column 6, lines 18-20). By adjusting the alignment screw 28' a primary molding is held flush with a wall opening by the screw head 60' bearing against a wooden buck J (Column 6, lines 20-25). This alignment screw differs from and is not equivalent to the spacer of claim 1.

The alignment screw in Davis is used to adjust a molding assembly so that it can attach to the buck of a door frame having different widths (see Fig. 3). In contrast, claim 1 recites a spacer for preventing the outer edge of a passive door from contacting a side portion of a frame in an astragal assembly. The alignment screw in Davis does not come in contact with a door. Likewise, the spacer of claim 1 does not come in contact with a door frame to position the astragal assembly in place. The spacer of claim 1 and the alignment screw of Davis are two different elements which serve completely different functions. Moreover, one of ordinary skill in the art would not think to combine the alignment screw in Davis with the astragal of Massey to create the invention of claim 1. Davis is used to position a molding against the buck of a door frame. An astragal frame assembly, by nature, is secured to the top and bottom frames of a door. It does not secure to a wall and therefore would not need the alignment mechanism disclosed in Davis. In addition, Davis does not disclose air circulating between the buck J and the molding 63. Accordingly, Davis fails to teach or suggest a spacer as recited in claim 1.

Applicant requests the withdrawal of the rejection from claim 1 on the grounds that, in addition to arguments set forth above, one of ordinary skill in the art would not be motivated to combine the jamb filler of Hendrickson with the astragal of Massey to achieve the wooden insert of claim 1.

The Examiner states that it would have been obvious to one of ordinary skill in the art to provide the insert of Massey with a wood construction as taught by Hendrickson "to improve the aesthetics of the astragal assembly." The Examiner further states that the rationale to combine these references is reasoned from knowledge generally available to one of ordinary skill in the art. Applicant respectfully disagrees with this assumption.

The jamb filler 76a in Hendrickson provides a uniform wood or planar exterior finished surface 76d for the window jamb 16 (column 5, lines 2-4). The upper jamb filler 76a has a substantially planar exterior intended to match the interior trim of the double hung window; typically a wood construction (column 5, lines 8-14). The jamb filler 76a of Hendrickson is designed, as the Examiner states, for the aesthetic purpose of enhancing the appearance of a window. The wooden insert of claim 1, however, is used for the functional purpose of attaching hardware, such as a strike plate of a door. The wooden insert is not used to enhance the appearance of the astragal. Accordingly, one of ordinary skill in the art would not seek to combine the decorative window jamb filler of Hendrickson with Massey to achieve the wooden insert of claim 1.

Furthermore, the Examiner does not explain how one would combine Hendrickson and Massey to achieve the wooden insert of claim 1 in a way that does not destroy their purpose. Hendrickson, for example, discloses a decorative jamb for

matching the trim of a window. Massey is directed to a door. The elements that the Examiner seeks to combine in these references have different configurations and function differently from the wooden insert of claim 1. The examiner may not merely pick and choose elements from references, using the claim as a guide. As discussed above, one of ordinary skill in the art would not think to combine the decorative window feature of Hendrickson with Massey to achieve a wooden insert having a non-aesthetic, functional purpose as described in claim 1. To do so would constitute impermissible hindsight.

In light of the above, Applicant respectfully requests the withdrawal of the rejection from claim 1 on the grounds that the cited references fail to teach or suggest all the elements of claim 1.

#### **5. Claims 2-21, 39 and 47**

Claims 2-21, 39 and 47 have been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Hendrickson and Davis. These claims are dependent, at least indirectly, on allowable claim 1. While these claims are allowable for this reason alone, Applicant wishes to highlight further differences between claims 4, 16, 20, and 21 and the cited references.

##### **a. Claim 4**

Claim 4 recites all of the elements of claim 1 wherein the wooden insert comprises multiple pieces of wooden strips secured within the elongated open channel. The jamb filler of Hendrickson is a single piece which extends along the inner wall section 46 of the inner channel guide 42 (Fig. 2B, column 5, lines 8-11). Neither Hendrickson nor the other cited references disclose a multiple piece wooden insert as

recited in claim 4. Accordingly, Applicant respectfully requests the withdrawal of the rejection from claim 4.

b. Claim 16

Claim 16 recites all of the elements of claim 1 wherein the exterior portion includes a hollow elongate tubular section. The frame in Massey is described as having a generally T-shaped profile with a wide outside molding 84 (Fig. 7, column 6, lines 8-13). Massey fails to disclose or suggest a hollow elongate tubular section as recited in Claim 16. The hollow tubular section is not merely a design choice. It serves a functional purpose as described in the specification. See, page 6, paragraph 33. Accordingly, Applicant respectfully requests the withdrawal of the rejection from claim 16.

c. Claims 20 and 21

Claim 20 recites all of the elements of claim 1 wherein the “wooden insert includes a first piece having a width substantially equal to a distance between the exterior portion and the interior portion and a second piece abutting the side portion.” Claim 21 recites all of the elements of claim 20 wherein the second piece has a width less than the width of the first piece. As discussed above, Hendrickson only discloses a single piece jamb filler. The cited references fail to disclose a multiple-piece wooden insert, especially one positioned as recited in claim 20 or with the respective sizes of claim 21. Accordingly, Applicant respectfully requests the withdrawal of the rejection from claims 20 and 21.

Applicant respectfully requests, in the furtherance of prosecution, that any future office action rejecting any of the dependent claims specifically point to where the elements of the claim may be found in the cited references.

#### **6. Claims 32-38**

Claims 32-35, 37, and 38 have been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Davis. Claim 36 has been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Davis and Hendrickson. Applicant respectfully submits that these claims are allowable on the grounds that the cited references fail to disclose or suggest all the elements of the claims. Specifically, Davis does not disclose or suggest a spacer as recited in claim 32 and Hendrickson would not suggest the wooden insert to one of ordinary skill in the art, as discussed above. Accordingly, Applicant respectfully requests the withdrawal of the rejections from claims 32-38.

#### **7. Claim 40**

Claim 40 has been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Hendrickson. Applicant respectfully submits that the examiner has misconstrued the retainer guide 43 in Massey. Applicant respectfully requests the withdrawal of the rejection of claim 40 on the grounds that the cited references fail to disclose all the elements of claim 40.

Claim 40 recites, among other elements, an elongated spacer extending directly from a side portion of a frame and having a distal end that engages a wooden insert. The Examiner states that Massey discloses this element. Massey, however, discloses a middle retainer guide 43 that is injection molded onto a bolt 38 (column 7, lines 18-24). The

middle retainer guide rides within the channels 29 formed in the extruded frame 28 (column 7, lines 26-28). This retainer guide differs from the spacer in claim 40 for a number of reasons.

The spacer, as recited in claim 40, extends directly from the side portion of the frame. The retainer guide of Massey, however, rides within the channel formed in the frame. In addition, claim 40 requires the spacer to be an elongated member, while the retainer in Massey is a prism having a length which appears substantially equal to its height (Fig. 2). According to Massey, the retainer must fit around bolt 38 and be slidably receiveable in the channels 29. An elongated member as described by claim 40 would not be suited for this function. Finally, the claim requires the distal end of the spacer to engage a wooden insert. The cover plate 25 of Massey snaps into slots in the retainer to be held in place (column 8, lines 29-33). Therefore, the retainer does not have a distal end for engaging an insert.

Accordingly, the cited references do not teach or suggest all the elements of claim 40. Applicant respectfully requests the withdrawal of the rejection from claim 40.

#### **7. Claims 41, 46, and 48**

Claims 46 and 48 have been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Hendrickson. Claim 41 has been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Hendrickson and Davis. These claims are dependent, at least indirectly, from allowable claim 40. While these claims are allowable for this reason alone, Applicant wishes to highlight further differences in claim 41.



Claim 41 has been amended to further define the outer spacer as continuing along the length of the assembly. The references cited by the examiner fail to disclose such a spacer.

Accordingly, Applicant respectfully requests the withdrawal of the rejection from claims 41, 46, and 48.

#### **8. Claims 42, 43 and 45**

Claims 42, 43 and 45 have been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Davis. Claim 45 has been rejected under 35 USC § 103(a) as being unpatentable over Massey in view of Davis and Hendrickson. Applicant respectfully submits that these claims are allowable on the grounds that the cited references fail to disclose or suggest all the elements of the claims. Specifically, as discussed above, Massey fails to disclose or suggest a spacer as recited in claim 42, Davis fails to disclose or suggest a spacer as recited in claim 43 and Hendrickson would not suggest the wooden insert to one of ordinary skill in the art. Accordingly, Applicant respectfully requests the withdrawal of the rejections from claims 42, 43 and 45

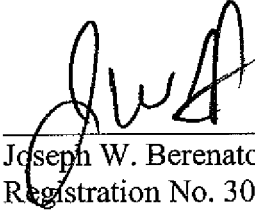
#### **CONCLUSION**

It is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, there being no other objections or rejections, this application is in condition for allowance, and a notice to this effect is earnestly solicited.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

If any further fees are required in connection with the filing of this amendment,  
please charge the same to our Deposit Account 50-0548.

Respectfully submitted,



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